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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,096	07/05/2001	Michael A. DeNatale	7157	4443

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EXAMINER

LEE, JINHEE J

ART UNIT PAPER NUMBER

2831

DATE MAILED: 07/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,096

Applicant(s)

DENATALE, MICHAEL A. 

Examiner

Jinhee J Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the perforations of claim 4 and angled manhole structure of claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

Claim Objections

4. Claims 7 and 12 are objected to because of the following informalities:

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Claim 72 line 1, the phrase "wherein its panels" has an error. Examiner suggests "wherein the panels of the secure cage" instead to correct the error.

Claim 12 line 1, the phrase "wherein that edge" has grammatical error. Examiner suggests "wherein an edge" instead to correct the grammatical error.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "and in conjunction with the side panels, being folded back" in lines 9-10. This limitation is confusing, it is not clear as to what is in "conjunction with the side panels" Examiner suggests "said front panels in conjunction with the side panels fold back" instead to clarify.

Claim 3 recites the limitation "the other side panel" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the various cage panels" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the front panel" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "a pair of front panels" in lines 1-2. This is confusing. Is this different "pair of front panels" from the ones in claim 1?

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Norman et al. (6070372).

Re claim 1 (as best understood), Norman et al. discloses a secure cage being formed of a series of panels (120, 140, 190 and 200) capable of being erected into its space providing structure, or folded and collapsed as during non-use, a series of foldable panels, said panels being folded into an erected polygonal shape, said panels for the cage forming a pair of side panels (120, 140, see figure 1), and front panels (190, 200), the side panels capable of securing to the approximate structure, the front panels capable of being locked into a protective configuration, said front panels capable of being opened, and said front panels in conjunction with the side panels fold back to provide access to any cables maintained (see figures 3-4).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 3, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norman et al. in view of Laetsch (6292556).

Re claim 2, Norman et al. substantially discloses a secure cage as set forth in claim 1 above with the side panels of the cage being permanently secured to a side of a structure, and the front panels capable of being locked into position for providing security and protection for any cables therein, but further capable of being opened to provide access to the cables for servicing (see figure 4). Norman et al. does not disclose that the structure is a manhole and that the cage locates within a manhole structure of the type provided for accommodating a plurality of fiber optic cables. However, Laetsch teaches of cages (protectors, see column 4 lines 21-23 according to the numbering in the middle) in manhole structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cage of Norman et al. in a manhole of Laetsch in order to provide housing for transmission wires. Also, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed, such as being located within a manhole, does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Re claim 3, Norman et al. substantially discloses a secure cage as set forth in claim 1 above with one of said sidewalls being permanently affixed to a side of the structure, and the other side panel being normally fastened and locked to the side of the structure, but capable of being opened, to provide for folding of the various cage panels

into a non-usable position to provide access to the cables during servicing (see figures 3 and 4). Norman et al. does not disclose that the structure is a manhole and that said cage is being provided within a manhole structure. However, Laetsch teaches of cages (protectors, see column 4 lines 21-23 according to the numbering in the middle) in a manhole structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cage of Norman et al. in a manhole of Laetsch in order to provide housing for transmission wires.

Re claim 12, Norman et al. substantially discloses a secure cage as set forth in claim 1 above. Norman et al. does not disclose that an edge of each side panel that secures to a side of the manhole structure includes an angle, and each angle capable of fastening to the side of the manhole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide angle on an edge of side panel capable of fastening to an angled manhole, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Re claim 13, note that the secure cage of Norman et al. includes one edge of one side panel with an angle (90 degrees for example) and is capable of being rigidly fastened to a side of the manhole, while an edge of the opposite side panel is capable of being removably locked to the side of the manhole structure during installation and erection of the secure cage (see figures 3 and 4).

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11. Claims 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norman et al. in view of Laetsch, as applied to claims 2 and 3 above, and further in view of Cucksey (4880210).

Re claim 4, the device of Norman et al. as modified by teachings of Laetsch discloses a cage as set forth in claims 2 and 3 above. It does not explicitly disclose a cage wherein said panels include a series of perforations to provide ventilation to the cables disposed therein. However, Cucksey teaches of a cage with perforations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cage with perforations of Cucksey on the cage of Norman et al./Laetsch in order to receive rod (see claim 4).

Re claim 5, the device of Norman et al. as modified by teachings of Laetsch and Cucksey substantially discloses a secure cage as set forth in claim 4 above. Norman et al./Laetsch/Cucksey does not disclose that the cage is provided for protecting the spliced dedicated cables for an individual customer. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed, such as provided for protecting the spliced dedicated cables for an individual customer, does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Re claim 6, note that the device of Norman et al. includes secure cage wherein the front panel includes a pair of front panels, said front panels having sides, said front panels, along one side (along 220 for example), being hinged together, and said front panels at their other sides being hinged to the side panels for the said cage, whereby all

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of said panels may be folded into a collapsed and substantially flattened condition when the cage is opened during servicing of the cables, but can be erected and locked into closure to provide protection and securement for any cables installed therein (see figures 3 and 4).

Re claim 7, note that the device of Norman et al. includes secure cage wherein its panels are formed of a lightweight material (see column 5 lines 54-57).

Re claim 8, note that the device of Norman et al. includes secure cage wherein its panels are formed of aluminum (see column 5 lines 54-57).

Re claim 9, the device of Norman et al. as modified by teachings of Laetsch and Cucksey substantially discloses a secure cage as set forth in claim 7 above. Norman et al./Laetsch/Cucksey does not disclose that the panel is formed of a rigid polymer. The examiner takes Official Notice that rigid polymer is well known in the electrical arts for its protective properties. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a panel of rigid polymer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Re claim 10, the device of Norman et al. as modified by teachings of Laetsch and Cucksey substantially discloses a secure cage as set forth in claim 7 above. Norman et al./Laetsch/Cucksey does not disclose that each secure cage has a dimension of approximately four feet wide, and one to two feet deep, and five feet in height. It would have been an obvious matter of design choice to use each secure cage that has a

dimension of approximately four feet wide, and one to two feet deep, and five feet in height, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Re claim 11, the device of Norman et al. as modified by teachings of Laetsch and Cucksey substantially discloses a secure cage as set forth in claim 10 above. Norman et al./Laetsch/Cucksey does not disclose that each panel of the secure cage is approximately five feet in height, and 18 to 24 inches in width. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use each panel of the secure cage that is 18 to 24 inches in width, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schaffer et al., Boer, Rylander, Wax, Perutz, Hollands and Struck are cited to show various components of a secure cage.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinhee Lee whose telephone number is 703-306-0154. The examiner can normally be reached on M-Th, 6:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 703-308-3682. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3431 for regular communications and 703-305-1341 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

jil
July 11, 2002

Dean A. Reichard 7/13/02

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